Board Composition and Ownership Structure in Switzerland: The Empirical Evidence

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Expiration of Swiss Stock Exchange Equivalence and Activated Protective Measure

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On 30 June 2019, the European Commission did not extend the so-called equivalence recognition of the Swiss legal framework applicable to stock exchanges. As a reaction, the Swiss Federal Department of Finance activated countermeasures designed to protect Swiss financial market infrastructures, in particular Swiss stock exchanges. This article provides an overview of the events surrounding the equivalence of the legal and supervisory framework applicable to stock exchanges and further discusses key legal considerations relevant to financial market participants.

By Ramona von Riedmatten

1) The Equivalence Recognition by the European Commission and its Significance for Swiss Stock Exchanges

On 3 January 2018, the EU Markets in Financial Instruments Directive (2014/65/EU) (MiFID II) and the EU Markets in Financial Instruments Regulation ((EU) No 600/2014) (MiFIR) were implemented. Article 23 MiFIR introduced a so-called share trading obligation, which imposes a trading obligation for shares admitted to trading on a regulated market or traded on a trading venue in the European Union (EU). Under this obligation, EU investment firms are required to trade such shares only on a regulated market, multilateral trading facility (MTF) or systematic internaliser in the EU, or on a third-country trading venue considered equivalent in accordance with MiFID II. Consequently, EU investment firms may trade shares on Swiss trading venues only if the European Commission recognizes the equivalence of the legal and supervisory framework applicable to such Swiss trading venues in accordance with MiFID II (such equivalence recognition, the “Equivalence”).

Since most Swiss issuers currently have their equity securities traded on one or more EU trading venues (either at their request or, more often, based on an unilateral decision of the relevant trading venue and a sponsor firm), the EU share trading obligation applies to numerous shares issued by Swiss issuers and Equivalence is of importance for Swiss stock exchanges in order for EU trading participants to be allowed to continue accessing the Swiss market locally. Absent such recognition, EU investment firms are generally not permitted to place orders (either directly or through brokers) to trade shares on the Swiss stock exchanges SIX Swiss Exchange (SIX) and BX Swiss (BX). A non-recognition of Equivalence does therefore generally result in the order flows from EU investment firms being redirected from SIX and BX to EU trading venues and significantly reduces the liquidity of Swiss equity markets. Moreover, lacking Equivalence, EU investment firms’ options to buy on whichever exchange provides the more favorable price and to implement best execution are affected.

2) Recent Events in Connection with the Equivalence Recognition

Against the background of the approaching applicability of MiFID II / MiFIR, in December 2017, the European Commission recognized that the legal and supervisory framework applicable to SIX and BX was equivalent to the requirements imposed by EU securities laws. However, the European Commission's decision was limited to a period of one year ending on 31 December 2018. The European Commission had indicated at the time that an extension of the applicability of its equivalence decision was, *inter alia*, subject to sufficient progress made towards an agreement establishing a common institutional framework between the EU and Switzerland, thereby provoking criticism about the linking of the technical equivalence decisions with non-related political matters.

One month prior to the expiration of the Equivalence and failing a positive decision from the European Commission with respect to the extension, the Swiss Federal Council announced that it had adopted special regulations designed to protect Swiss financial market infrastructures on 30 November 2018. More specifically, the Federal Council has adopted the Ordinance on the Recognition of Foreign Trading Venues for the Trading of Equity Securities of Companies with a Registered Office in Switzerland (ORFTV).

In December 2018, the European Commission confirmed the extension of the Equivalence for another six months until 30 June 2019. Another extension going beyond such date has not been granted as of today.

On 24 June 2019, the Federal Department of Finance (FDF) announced that it will activate the protective mesure under the ORFTV as of 1 July 2019 in case the European Commission has not announced by then that it will extend Switzerland's exchange equivalence in due course. Expecting that the European Commission would not grant extension in time, on 27 June 2019, the FDF confirmed that the protective measure will be activated as of 1 July 2019.

3) The ORFTV in Detail

The key feature of the ORTFV is the duty of trading venues having their registered office outside of Switzerland (foreign trading venues) to obtain prior recognition from the Swiss Financial Market Supervisory Authority (FINMA) if equity securities of companies having their registered office in Switzerland and listed on a stock exchange in Switzerland or traded on a trading venue in Switzerland (Swiss listed equities) are traded at such foreign trading venues. This new recognition requirement is complemented by the possibility of temporary authorization for foreign investment firms desiring to participate in Swiss trading venues.

a) Legal Basis and Objectives

The Federal Council introduced the ORFTV based on its competence for foreign relations under the Swiss Constitution, authorizing the Federal Council to issue ordinances and rulings without involving the Swiss Parliament where safeguarding of the interests of the country so requires.

The objective of the ORFTV is that EU investment firms can continue to trade Swiss listed equities on Swiss trading venues which is only possible if in doing so, EU investment firms neither violate the EU share trading obligation nor Swiss law.

In its communications, the FDF continuously emphasizes that the Federal Council's primary objective remains to obtain an unlimited extension of Equivalence.

b) Duty to Obtain Recognition for Foreign Trading Venues

According to article 1 ORFTV, trading venues with registered office outside of Switzerland must obtain prior recognition from FINMA if Swiss listed equities are traded at such trading venues or if such trading venues facilitate the trading of Swiss listed equities.

FINMA shall grant recognition if the foreign trading venue is subject to appropriate regulation and supervision and does not have its registered office in a jurisdiction that restricts its market participants in trading Swiss listed equities on Swiss trading venues and thereby significantly and adversely affects the trading in Swiss listed equities on Swiss trading venues (article 2 ORFTV). The FDF publishes a list of such restricting jurisdictions. The latest update of this list was published on 27 June 2019 and the only jurisdictions included in the list are the member states of the European Union. Consequently, no recognition can be granted to EU trading venues as of 1 July 2019.

Unable to obtain recognition from FINMA, EU foreign trading venues violate ORFTV and potentially face criminal liability (see paragraph d) below) if Swiss listed equities are traded on them. If EU trading venues want to comply with ORFTV, they must not permit the trading of Swiss listed equities (except for certain shares with dual listing). Given that the share trading obligation according to article 23 MiFIR only applies with respect to shares admitted to trading on an EU regulated market or traded on an EU trading venue, article 1 ORFTV generally results in non-applicability of the share trading obligation with respect to Swiss listed equities. Therefore, since 1 July 2019, EU investment firms can trade Swiss listed shares on (non-equivalent) Swiss trading venues without violating EU law. Further, the share trading obligation does not apply if the trading occurs non-systematically, ad hoc, irregularly and infrequently (article 23 (1) (a) MiFIR). Thus, even if a certain trading volume with Swiss listed equities remains on EU trading venues, EU investment firms can generally trade Swiss listed equities on SIX or BX and be in compliance with MiFIR. In summary, ORFTV provides a basis for EU investment firms to continue trading Swiss listed equities on Swiss trading venues, absent Equivalence, without breaching the EU share trading obligation.

However, the share trading obligation still applies to equity securities issued by European issuers and such equity securities can no longer be traded by EU investment firms on Swiss trading venues despite the protective measure. Against this background, SIX Swiss Exchange suspended the trading of all listed shares in the "Sponsored Foreign Shares" trading segment starting from 1 July 2019 and ceased to offer Swiss EBBO service for on-exchange, hybrid trading of Swiss equity securities, which seeks to achieve trades at European best bid and offer prices on a best-effort basis (*cf.* https://www.six-group.com/exchanges/swx_messages/online/swx_message_201906281150_en.pdf)

Foreign stock exchanges do not require a recognition with respect to the trading of Swiss listed equities that were already admitted to trading or listed on the foreign stock exchange prior to 30 November 2018 with the consent of the relevant Swiss issuer, *i.e.,* if the relevant Swiss issuer had a secondary listing in the EU at that time (article 1 (2) ORFTV).

c) Temporary Authorization of Foreign Participants

Today, foreign participants at Swiss trading venues require an authorization by FINMA (*cf.* article 40 of the Swiss Financial Markets Infrastructure Act (FMIA)) and are subject to record-keeping and reporting obligations (articles 38 and 39 FMIA). In order to quickly enable EU investment firms (who used to trade Swiss listed equities on EU trading venues) to participate in Swiss trading venues directly (and not only via a Swiss broker) FINMA can, pursuant to article 4 ORFTV, temporarily grant authorization for up to one year and such newly authorized foreign participants have to fulfil their record-keeping and reporting obligations by August 2019 (with trades executed between 1 January 2019 and 31 July 2019 being recorded and reported retroactively by 1 October 2019). This possibility accounts for the surge of requests for authorization that may result from the restrictions imposed on foreign trading venues.

How many EU investment firms will make use of this temporary authorization is not yet clear. In many cases, firms wishing to trade in Swiss listed equities may simply choose to go through an existing participant on the SIX or BX, thereby avoiding (even the limited) administrative expenditure. In case the Equivalence will not be granted for a prolonged period of time, it is to be expected that more EU investment firms will likely make use of this opportunity.

d) Criminal Sanctions

The ordinance is deemed to be a financial market act (article 5 ORFTV). Therefore, the criminal provisions set out in the Swiss Financial Market Supervision Act (FINMASA) apply, providing for a prison term of up to three years or a monetary penalty of up to CHF 540,000 in case of intentional breach, or a fine of up to CHF 250,000 in case of negligence when carrying out without a recognition an activity requiring such recognition (article 44 FINMASA).

4) Conclusion and Outlook

According to market participants neither disruptions nor illiquidity in stock trading were observed due to the activation of ORFTV in the first week of July 2019. In fact, trading turnover in Swiss shares on SIX during the month July 2019 was considerably higher compared to the average trading turnover in Swiss shares during the month July in the last ten years.

So far, the ORFTV has proven effective in protecting and safeguarding the functioning of Swiss stock exchange infrastructures. However, the long time effects of the ORFTV regime will materialize only over time and the full effect of the non-Equivalence and Switzerland's protective measures depends on the duration of the current set-up in particular. Further remains to be seen to which extent foreign trading venues will comply with ORFTV and how effectively FINMA will be able to enforce it.

In the context of the Swiss Equivalence discussions, the question arose, whether a withdrawal of equivalence from the UK trading venues could be used as a negotiating tool in the Brexit debate. Whilst commentators have different views on this, many of them doubt that the European Commission would choose the same approach in Brexit negotiations, particularly when taking into account that the UK stock market has approximately twice the size of Switzerland's market, and further given the fact that UK clearing houses are and will continue to be a core part of Europe's trading infrastructure.

The ORFTV is time-limited until year-end 2021 and can also be repealed by the Federal Council before then.

While market participants and market commentators currently find themselves somewhat in a "wait and see" situation, I can concur with what the Swiss Federal Council and the FDF repeatedly emphasized: an unlimited extension of the stock exchange equivalence is the preferred solution and best for all parties involved.

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The Rise of Swiss Domestic Covered Bond Programmes

Reference: CapLaw-2019-27

In the recent past, Swiss domestically oriented covered bond structures have become increasingly popular. Under recent successfully established domestic, purely Swiss law governed covered bond structures, Swiss issuers have been able to replicate traditional English law elements of covered bonds under Swiss law, enabling the covered bonds to be assigned a triple-A rating. This article discusses the key features.

By Stefan Kramer / David Borer

1) Background

Traditionally, Swiss structured covered bonds have been issued by the UK branch (or another non-Swiss branch) of a Swiss bank into the international market. To a considerable extent, such Swiss structured international covered bonds were built on features developed in the context of covered bonds structured under English law (including a UK trustee concept), but the resulting structure was tailored to reflect specific Swiss legal, regulatory, tax and insolvency law aspects.

In the recent past, more Swiss domestically oriented covered bond structures, including a listing on the SIX Swiss Exchange, have become increasingly popular. Under recent successfully established domestic, purely Swiss law governed covered bond structures, Swiss issuers have been able to replicate traditional English law elements of covered bonds under Swiss law, enabling the covered bonds to be assigned a triple-A rating.

2) Structural Elements of Covered Bonds

The key elements of recent (international and domestic) Swiss structured covered bonds can be summarized as follows:

1. The Swiss bank issues covered bonds as direct, unconditional and unsubordinated obligations of the issuer.

2. The obligations of the issuer under the covered bonds benefit from a guarantee issued by a subsidiary of the issuer under a so-called guarantee mandate agreement to, or for the benefit of, the covered bondholders.

3. Under the guarantee mandate agreement, all liabilities, costs and expenses incurred by the guarantor under or in connection with the guarantee will have to be reimbursed (or pre-funded accordingly) by the issuer.

4. As security for the relevant reimbursement and pre-funding claims of the guarantor, the Swiss bank acting as issuer transfers a segregated pool of mortgage loans, together with the related mortgage certificates, to the guarantor.

Accordingly, if the issuer defaults under the covered bonds and the guarantee is to be drawn, the guarantor could claim for coverage by the issuer under the guarantee mandate agreement. Failure by the issuer to pre-fund the payments drawn under the guarantee would allow the guarantor to enforce the segregated cover pool and use the proceeds to satisfy its payment obligations under the guarantee.

The segregated cover pool assets mainly consist of Swiss mortgage loans granted by the issuing bank to Swiss domestic borrowers and the respective mortgage certificates securing such loans. Additionally, cash and other qualifying substitute assets may be part of the cover pool.

3) Certain Key Features of Swiss Domestic Covered Bonds

a) Applicable law

The traditional Swiss international structured covered bond programmes implemented by the two Swiss G-SIBs in the past decade featured a combined English | Swiss law structure, combining the requirements of issuing into the international market with the particularities of a cover pool consisting of Swiss mortgage assets.

Under such a combined English | Swiss law structure, the covered bonds as well as certain agreements essential for the functioning of the covered bond programme, such as the trust deed governing the role of the trustee and the intercreditor deed governing the priority of payments in relation to the proceeds of the cover pool, were governed by English law. Conversely, the agreements governing the transfer of the mortgage assets and the relationship between the issuer and the guarantor are governed by Swiss law. Swiss law governed agreements include, in particular, the security assignment and transfer agreement under which the mortgage loans and the related mortgage certificates are transferred to the guarantor and into the cover pool.

In contrast, under pure Swiss domestic structures, the covered bonds as well as all other transaction documents (to the exclusion of any swap agreements) are governed by Swiss law. Accordingly, transaction features that are typically inherent to covered bond transactions involving an English law governed part (including, in particular, a UK trustee structure as well as priority of payments and limited recourse provisions) need to be appropriately replicated under Swiss law.

b) Domestic issuer

Domestic covered bonds are typically issued out of the Swiss head office of the issuer and listed on the SIX Swiss Exchange. Therefore, contrary to Swiss international structured covered bond programmes providing for the issuance out of a non-Swiss branch, interest payments on Swiss domestic covered bonds are subject to Swiss withholding tax. That said, the Swiss domestic market continues to see demand from Swiss institutional and retail investors, which are generally used to instruments subject to Swiss withholding tax. Accordingly, domestically oriented issuance structures for covered bonds may become even more popular in the future.

c) Segregated cover pool

The cover pool consists of mortgage loans granted to Swiss residents, which are secured by real estate located in Switzerland. For purposes of the covered bonds, the claims arising under such mortgage loans are transferred as a security to the guarantor together with the related mortgage certificates. Accordingly, the guarantor will acquire the relevant mortgage claims together with legal title in the mortgage certificates, which represent the lien on the residential real estate encumbered.

In case of insolvency of the issuer, the covered bondholders benefit from the guarantee issued by the guarantor which is backed by the assets in the cover pool, in addition to their direct recourse to the issuer. While mortgages in the cover pool have been transferred to the guarantor for security purposes only and, therefore, have remained on the balance sheet of the issuer, in the case the issuer is insolvent, the assets in the cover pool would be segregated from the estate of the issuer. Accordingly, as the guarantor is the title owner of the cover pool assets it may, subject to any avoidance action, manage and enforce such assets independently from any insolvency procedure concerning the issuer. If an enforcement event occurs, the guarantor is entitled to liquidate a sufficient part of the cover pool assets by collecting the mortgage claims (if and when they fall due) or, subject to certain restrictions, by way of a private sale of mortgage assets to an eligible investor.

d) Role of the trustee and bondholders' representative

Under the traditional Swiss international structured covered bond programmes, an English law bond trustee representing the rights and interests of the covered bondholders was appointed under an English law trust deed. Under English law, the trustee holds the benefit of the rights, powers and covenants in the covered bonds on trust for itself (in its own name) on behalf of the covered bondholders. Due to the English law trust structure, the covered bondholders are not exposed to the counterparty risk of the trustee even if the trustee is holding assets and|or claims in its own name on behalf of the covered bondholders. In its capacity as representative of the covered bondholders, the trustee is also a party to certain essential transaction agreements.

As opposed to English law, Swiss law does not know the concept of a trustee. Accordingly, in a pure Swiss law covered bond structure, the powers of the trustee need, to the extent possible, to be replicated under Swiss law with a view to provide a similar level of protection for the investors. However, as there is no substantive trust law in

Switzerland, it is not possible to establish a trustee structure similar to the English law trust arrangements.

In particular, Swiss law provides that if covered bonds are publicly offered by a Swiss issuer without the involvement of a non-Swiss branch, the bondholders form a community of bondholders (*Gläubigergemeinschaft*) by operation of law and the mandatory rules on bondholders' meetings (*Gläubigerversammlung*) and the representation of the bondholders by the bondholders' representative (*Anleihensvertreter*) pursuant to the Swiss Code of Obligations apply (Swiss Bondholder Provisions)[1]. The Swiss Bondholder Provisions provide for a legal concept that allows the community of bondholders to resolve on any matters affecting the interests of the bondholders based on a majority vote. If approved by the applicable majority, the resolution of the bondholders' meeting will be binding on all bondholders. Moreover, the community of bondholders may transfer certain powers to a bondholders' representative. The bondholders' representative has the powers transferred to him by law, by the terms and conditions of the bonds (subject to certain limits set by applicable law) or by the bondholders' meeting. To the extent the bondholders' representative is entitled to exercise certain rights on behalf of the covered bondholders, individual bondholders may no longer independently exercise such rights. The main statutory rights of the bondholders' representative include, amongst other things, certain monitoring rights in relation to the issuer, and the right to request the issuer to call a bondholders' meeting. Under a recent purely domestic Swiss covered bond programme, the concepts of the bondholders' representative and certain contractual features were combined to equip the "Swiss law trustee" with sufficient powers to provide for a level of protection of the covered bondholders that has enabled the covered bonds to be assigend a triple-A rating. For this purpose, the entity acting as "trustee" is appointed to act both as contractual trustee and as bondholders' representative in the sense of the Swiss Bondholder Provisions. While both such roles are assumed by the same legal entity, the role of the contractual trustee is separate from the role of the bondholders' representative: In its role as trustee, the relevant entity is appointed by the issuer and the guarantor under a (Swiss law governed) trust agreement to safeguard the rights of the covered bondholders with respect to the cover pool. For this purpose, the contractual trustee becomes a party to the certain essential transaction agreements.

Moreover, in light of the fact that Swiss substantive laws do not know the concept of a trust, the bondholders' representative is authorized in the terms and conditions of the covered bonds to hold and enforce the rights under the guarantee as direct representative (*direkter Stellvertreter*) in the name and for the account of the covered bondholders.

[1] According to a draft bill proposed by the Swiss Federal Council in March 2019, the Swiss Bondholders Provisions are envisaged to be amended with a view to allow, subject to certain conditions, for rights of the bondholders' meeting and the bondholders' representative to be waived or altered in the terms and conditions.

e) Limited recourse and priority of payments

Swiss law does not provide for a specific statutory regime allowing the creation of a bankruptcy remote special purpose vehicle such as the guarantor. Therefore, Swiss covered bond transactions typically involve a number of contractual features to increase the bankruptcy remoteness of the guarantor. Transaction documents usually provide that any rights and claims of transaction parties and investors against the guarantor (including under the guarantee) are limited to the amount available to satisfy the relevant obligations (so-called limited recourse) and cash collections are distributed with contractually agreed priority of payments (so-called waterfall).

Under Swiss substantive law, limited recourse provisions can be replicated as a contractual arrangement under which the relevant transaction parties agree to their claims being limited in amount, from time to time, to the funds available to the guarantor to satisfy the relevant claim after giving effect to the relevant priority of payments. While parties to the transaction documents can validly agree to such limitations of their claims based on the concept of freedom of contract, it should be noted that creditors of the guarantor that are not a party to the transaction agreements (for example, tax authorities and other non-contractual creditors of the guarantor) are not subject to the limited recourse. Therefore, the corporate documents and transaction agreements are designed to limit, to the extent possible, any unpaid claims by such third parties.

4) Outlook

The recent successful launch of purely domestic covered bond programmes shows that it is possible to sufficiently replicate traditional English law key structural elements of covered bond transactions under a pure domestic structure. Since structured covered bond programmes provide for a diversification of funding sources and have proven to be a robust funding tool in times of liquidity constraints in the market, it will be interesting to see whether other issuers will follow the path.

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Discontinuation of LIBOR and Swiss Law-Governed Legacy Bonds – Time to Take a Closer Look

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LIBOR was – and still is – the dominant reference rate for CHF-denominated floating rate and other variable interest rate bonds. There is still a significant number of outstanding "legacy bonds" with such variable interest rates that have maturities beyond the end of 2021, the announced time for the discontinuation of LIBOR. This article discusses considerations for issuers and bondholder representatives in dealing with such "legacy bonds".

By René Bösch / Eduard De Zordi / Benjamin Leisinger / Lee Saladino

1) Background

In his July 2017 speech on The Future of LIBOR, Andrew Bailey of the UK Financial Conduct Authority (the **FCA**), which regulates LIBOR, announced that the FCA intends to no longer persuade, or compel, banks to submit to rates for the calculation of LIBOR after 2021. Although it is expected that all the current panel banks would agree voluntarily to sustain LIBOR for a four to five-year period, *i.e.*, until the end of 2021, the speech made it clear that the continuation of LIBOR on the current basis cannot and will not be guaranteed after 2021.

About two years have passed since Mr. Bailey's speech, and various participants in the CHF-denominated bond market have invested significant effort in finding a solution to the expected discontinuation of CHF LIBOR. Some bond issuers began to include (increasingly) sophisticated fallback and/or replacement rate provisions in the terms and conditions of their floating rate (or other variable interest rate) CHF-denominated bonds to specifically address how the interest rate will be determined if CHF LIBOR is discontinued. These provisions have been drafted without knowing how and when CHF LIBOR will exactly disappear and what will follow, so there can be no certainty that they will operate as expected if and when the time comes. Notwithstanding this development, there are still a significant number of outstanding CHF-denominated bonds scheduled to mature after 2021 that have interest rates determined by reference to CHF LIBOR and have terms and conditions that do not address the effect of a discontinuation of CHF LIBOR on the determination of the interest rate – be it because they contain no fallback provisions at all or no specific fallback or replacement rate provisions addressing such a discontinuation (such bonds being referred to herein as "legacy bonds"). For issuers of legacy bonds, as well as for bondholder representatives and holders of such legacy bonds, the question arises: what, if anything, they should do at this juncture?

2) Amend the Terms and Conditions?

One possible approach would be to amend the terms and conditions of the legacy bonds. If this is done while there is still uncertainty as to the identity and related mechanics of the industry-accepted successor rate for CHF LIBOR, such an amendment could take the form of a new or additional fallback provision and/or open-ended replacement rate provision. In either case, such a provision would provide for the replacement of CHF LIBOR with a new rate meeting certain parameters and under certain conditions. Once there is an industry-accepted successor rate to CHF LIBOR, this could also be done by adding a provision providing for the replacement of CHF LIBOR with such successor rate.

However, in the case of Swiss issuers of legacy bonds that were public offered, amending the terms and conditions must not only be done in compliance with the terms and conditions of the relevant legacy bonds, but also in compliance with the mandatory rules on bondholder meetings in the Swiss Code of Obligations (**CO**). This article specifically addresses Swiss issuers and how they may deal with such legacy bonds in compliance with the CO.

a) Swiss Issuers – Application of the Bondholder Meeting Provisions in the CO

If the relevant legacy bonds were offered directly or indirectly for public subscription by a Swiss issuer, *i.e.*, an issuer whose domicile or commercial office is in Switzerland, then by operation of law the bondholders will form a community of creditors and the mandatory provisions on bondholder meetings of articles 1157 et seq. of the CO apply.

Articles 1157 et seq. CO contain certain high-level provisions on bondholder meetings, with the more detailed provisions governing such meetings being set forth in an implementing ordinance issued by the Swiss Federal Council.

b) Quorum and Majority Requirements

With respect to amendments of the terms and conditions of Swiss law-governed bonds, one has to distinguish between types of amendments that are already specifically provided for in the terms and conditions themselves (and that are, therefore, covered by the parties' agreement) and other types of amendments. In the case of an amendment foreseen in the terms and conditions, the applicable provision of the terms and conditions will normally also govern how such amendment may be effected. With respect to any other amendment of the terms and conditions, the mandatory Swiss provisions on bondholder meetings will apply. However, not all amendments are treated identically under such provisions. Rather, these provisions differentiate between amendments that are, for bondholders, clearly positive, neutral to positive, negative and specifically set forth in an exhaustive list of measures, and negative and not set forth in such list.

In the context of amending the terms and conditions of legacy bonds in a way that will or may result in the replacement of CHF LIBOR (or the relevant reference rate based on CHF LIBOR) as the reference rate, three provisions of Swiss law are of particular importance:

- Article 1170 CO, which, subject to stricter requirements in the terms and conditions, if any, requires a majority of at least two-thirds of the outstanding aggregate principal amount of the relevant series of bonds to pass a valid resolution approving certain enumerated measures. This exhaustive list includes measures that decrease the interest rate by up to one-half of the rate set by the terms and conditions of the bonds for a period of up to ten years, with the option to extend such period for up to an additional five years.

- Article 1173 CO, which applies to resolutions approving measures not set forth in article 1170 CO, but that still negatively modify the rights of bondholders, and requires unanimous consent. Except for privately placed bonds, this standard of unanimous consent is impossible to achieve in practice.

- Article 1181 CO, which applies to resolutions approving measures that do not limit the rights of the bondholders, and, subject to stricter requirements in the terms and conditions, if any, merely requires more than half of the outstanding aggregate principal amount of the bonds actually represented at the bondholders' meeting, unless the law stipulates otherwise (*cf.* article 1170 CO, or the revocation or modification of the authority conferred on a bondholder representative governed by article 1180 CO).

If the issuer's rights are negatively modified by any amendment to the terms and conditions of the bonds, such amendment will require the consent of the issuer as well.

Applying the above to legacy bonds, if the use of the industry-accepted successor rate to CHF LIBOR in place of CHF LIBOR would be, or if the terms of the fallback or open-ended replacement rate provision are, economically positive to the bondholders, the issuer could take the view that the bondholders will not object to getting more than they bargained for and, consequently, that no bondholders' consent for amending the terms and conditions to provide for such use or provision is required. Arguably, for Swiss law-governed legacy bonds, the issuer may also rely, by analogy to article 6 CO, on the presumption of consent by all bondholders, so long as such successor rate or fallback or replacement rate provision, as applicable, is clearly beneficial to the bondholders for the remaining term of such legacy bonds. Therefore, the economic effect that replacing CHF LIBOR with the industry-accepted successor rate or that a new or additional fallback or open-ended replacement rate provision, as the case may be, will have on bondholders is of the upmost importance when determining whether such replacement or the introduction of such a provision requires bondholder consent. In our view, such effect would need to be assessed only one time, *i.e.*, prior to first introducing the successor rate or fallback or replacement rate provision and amending the terms and conditions. The economic effect does not need to be measured on an ongoing basis or at any particular time thereafter (*e.g.*, when the interest rate resets or when the fallback or open-ended replacement rate provision is actually triggered).

The analysis described above may be illustrated by reference to an extreme example: if using a new reference rate in place of CHF LIBOR would effectively reduce the interest rate by up to one-half of the rate envisaged in the terms and conditions of the bonds, article 1170 CO would require at least a two-thirds majority consent to do so. If the reduction were more than that, only a unanimous consent could achieve this. It is, however, very unlikely that the bondholders would agree to such an amendment, the terms of which are to their disadvantage.

The crucial question is, therefore, how to achieve a result that is as economically neutral as possible; meaning to ensure the continuation of the economic bargain with respect to the interest rate that would have been in place had CHF LIBOR not been discontinued (and replaced). And how do issuers know whether there is such an economically neutral switch and what to do then? This question calls for an interpretation of the terms and conditions.

3) Interpretation of Terms and Conditions of Swiss Law-Governed Bonds

a) Principles of Interpretation

In Swiss law, when interpreting the terms and conditions of a bond, the primary focus is on an objective interpretation thereof based on the principle of trust. According to the Swiss Federal Supreme Court, in light of the principle of trust, it is relevant "what reasonable and correctly acting parties would have wanted to agree among themselves in the circumstances at the time the contract was concluded" and "how a condition or statement could, and had to be, understood in good faith by the recipient", whereby "always the context, in which the expression of will was made has to be taken into consideration".

In the case of the terms and conditions of a bond, doctrine demands that the terms and conditions be interpreted uniformly, rather than based on the relevant individual's good faith interpretation. Thus, it is not a question of what the individual buyer of the bond understood at the time of purchase. Rather, the decisive factor is how an average professional investor would understand the terms and conditions based on the principle of trust. Some scholars have expressly stated that an interpretation in conformity with the capital market should take precedence over interpretations based on principles of investor protection. However, even with an interpretation in conformity with the capital market, the primary means, and starting point, of interpretation is still the actual wording, with respect to which the understanding of an average professional investor is decisive. Using methods analogous to the rules applied in connection with general terms and conditions (which terms and conditions are not in Swiss law), doctrine requires any unclear terms to be interpreted against the issuer.

Accordingly, when interpreting the interest provision in Swiss law-governed terms and conditions, the question should be "what would the hypothetical average professional investor and the issuer have agreed" and does the wording itself provide any indication as what the parties agreed (*e.g.*, even if there is no explicit fallback provision, does the provision speak of a possible successor rate, screen page or administrator)?

b) Application to Interest Provisions tied to CHF LIBOR in Legacy Bonds

In our view, when analyzing the Swiss law-governed terms and conditions of any legacy bonds, the hypothetical will of the parties – which would also be relevant in the case of a *clausula rebus sic stantibus* and an amendment of a contract by a Swiss court due to unforeseeable change in circumstances – cannot have been to have a dysfunctional interest rate provision. Furthermore, we believe that a dysfunctional interest rate provision should not result in an extraordinary termination right either because of the general principle of *pacta sunt servanda* and the economic expectations of the parties at the time of issuance of the legacy bonds.

In the case of Swiss law-governed terms and conditions of legacy bonds that provide for the calculation of interest on the basis of CHF LIBOR without the benefit of any fallback provision whatsoever, the agreement to issue and purchase such legacy bonds may well be interpreted as (i) an agreement to use the industry-accepted and prevailing reference rate for CHF-denominated floating rate bonds generally and (ii) an agreement to be treated economically the same way as if CHF LIBOR had been continued. In other words, an agreement to replace CHF LIBOR (or the reference rate based on CHF LIBOR) with the successor industry-accepted and prevailing reference rate for CHF-denominated floating rate bonds and implement whatever adjustments to such rate as are necessary in order to reduce or eliminate, to the extent reasonably practicable under the circumstances, any economic prejudice or benefit, as applicable, to holders as a result of such replacement of CHF LIBOR.

c) But the Terms and Conditions Prevail…

Notwithstanding the above, if the terms and conditions of the legacy bonds already contain a fallback provision that would provide a way to calculate the interest rate if CHF LIBOR were to be discontinued, we see little room for proceeding as laid out in the previous subsection b). This, unfortunately, holds true even if the interest rate resulting from such fallback provision turns out not to be beneficial for the holders or the issuer – *e.g.*, if the ultimate fallback in the conditions is the continuation of the last interest rate on a fixed-rate basis and the interest rates significantly rise (negative to the issuer) or fall (negative to the holders) thereafter. In this case, the parties have agreed on a specific fallback regime that may only be amended with bondholders' consent (subject to obtaining requisite defined majority required under the CO to pass such amendment). The introduction of a fallback provision that takes into account the principles set out in subsection b) above should, however, be neutral to the bondholders and, therefore, could be approved by the defined majority required under article 1181 CO, subject to stricter requirements in the terms and conditions, if any.

d) Just Pay the New Interest Rate?

Even if the discontinuation of CHF LIBOR can be addressed by merely interpreting the terms and conditions of the respective legacy bonds (*i.e.*, rather than by amendment), the new reference rate or mechanism for calculating the interest rate will still have to be communicated to the bondholders. Accordingly, the issuer must publish a notice in line with the terms and conditions and – for bonds listed on the SIX Swiss Exchange – publish an official notice in line with the Directive Regular Reporting Obligations of the SIX Swiss Exchange.

4) Importance of the Economic Effect

Whichever approach is chosen, the analysis as to what is permissible and how it should be effected depends largely on the assessment of the economic effect the new interest rate or interest rate mechanism will have on bondholders.

To complete this assessment, as well as to evaluate the risks associated with a particular approach, the relevant terms and conditions should be analyzed as to whether the approach chosen may potentially constitute an event of default thereunder and, in such case, who would be authorized to accelerate the bonds. In the case of Swiss law governed terms and conditions, typically only the bondholders' representative can accelerate the bonds. For this reason, it is advisable that each issuer coordinates its approach with the applicable bondholders' representative(s).

5) Time to Act

As the end of 2021 comes closer, it is clear that companies should now take a close look at the terms of any legacy bonds issued or guaranteed by them, particularly at their maturity dates and the interest rate provisions contained therein.

In this context, it is advisable to also review related hedging arrangements and to analyze the consequences an amendment (or adjusted interpretation) of the terms of conditions of the respective legacy bonds may have on such arrangements.

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Swiss Withholding Tax – Quo Vadis?

Reference: CapLaw-2019-29

On 26 June 2019, the Federal Council approved the objectives and key figures for a withholding tax reform. The Federal Council wants to strengthen the Swiss debt capital market and to extend the safeguard purpose for Swiss individuals. Interest payments to Swiss entities and foreign investors shall be exempt from withholding tax. For Swiss resident individuals, withholding tax shall also be applied on interest from foreign investments if held through a Swiss paying agent. The consultation draft is expected in autumn 2019.

By Alexandra Hirt

1) Current Swiss Withholding Tax System

At present, withholding tax is levied on interest, participation income, lottery winnings and certain insurance benefits. The legal basis is the Withholding Tax Code of 13 October 1965. The applicable tax rate is 35%. The tax is levied independently of the person of the investor. It affects both individual and institutional investors, as well as foreign investors.

A differentiation is made at the refund level. Swiss-resident investors can normally obtain a full refund of the withholding tax if they declare to the authorities responsible their income subject to withholding tax. In Switzerland, the withholding tax thus has a safeguard purpose. Foreign investors are entitled to a full or partial refund of withholding tax, depending on the applicable double taxation agreement between Switzerland and their country of residence. With regard to foreign investors, the tax is partly intended for fiscal purposes.

The withholding tax on domestic bonds is a disadvantage of the Swiss capital market. Foreign investors might reclaim the withholding tax, but the procedure is cumbersome and, depending on the recipient state, the reclaimability is limited. Swiss bonds are therefore unattractive for foreign investors. Withholding tax often prevents Swiss groups from raising capital in Switzerland. They prefer to issue bonds through a foreign subsidiary.

There are various other reasons for reforming the current system. Gaps in the safeguard purpose for Swiss resident individuals shall be reduced. Further, the international automatic exchange of information helps to ensure taxation in the country of residence of the respective investor and is, therefore, an additional safeguard measure to ensure taxation in the participating countries.

2) Developments to Date

The reform of the withholding tax has been in political discussion for about 10 years. The Federal Council had launched a first reform of the withholding tax in 2010 in order to strengthen the Swiss debt capital market. The Federal Council wanted to replace the existing debtor-based regime by a paying agent-based regime. Parliament, however, rejected this proposal in 2012.

At the end of 2014, the Federal Council launched the consultation on a new proposal. Again, the Federal Council suggested a system change from the debtor principle to the paying agent principle. Due to the negative feedback in the consultation process from Swiss official and private bodies, the Federal Council decided in June 2015 to postpone the reform until further notice.

On 26 June 2019, the Federal Council decided to reactivate the suspended reform of the withholding tax. The Federal Council approved the objectives and key figures for the withholding tax reform. The Federal Finance Department shall prepare a consultation draft by autumn 2019.

3) Strategic Directions for the Consultation Draft 2019

The Federal Council formulated the following objectives for the preparation of the consultation draft, combined with a total of eight parameters for the implementation:

a) Strengthening Switzerland's Debt Capital Market

One core element of the reform proposal is the exemption of Swiss legal entities and foreign investors from withholding tax on interest investments (*Parameter 1*). The Federal Council expects this to significantly strengthen the Swiss bond market. Swiss groups shall be able to issue their bonds at competitive rates.

b) Extension of the Safeguard Purpose of Withholding Tax in Switzerland

The second core element of the reform is the extension of the safeguard purpose for Swiss resident individuals in order to combat tax evasion. Swiss resident individuals shall in the future also be affected by a withholding tax on foreign interest payments if such investments are held through a Swiss paying agent; net income from foreign equities remain out of scope (*Parameter 2*).

c) Ensuring Legal Certainty and Stability of the Financial Centre

A transitional regulation shall be provided for existing too-big-to-fail instruments (CoCos, bail-in and write-off-bonds) (*Parameter 3*). These instruments are currently exempt from withholding tax.

Further, a legal basis shall be established for structured products. It should be stipulated in the law that payments which are used to replicate or pass on bond interest, dividends or the like are subject to withholding tax (*Parameter 4*).

d) Consideration of Additional Costs and Liability Risks

The banks are facing new responsibilities due to the planned reform. The Federal Council is aware that this will increase their liability risk and that implementation will lead to costs. Paying agents shall receive an adequate compensation, possibly for a limited period (*Parameter 5*). The withholding tax is to be levied on an ongoing basis (*Parameter 6*). Criminal liability shall be limited to intent (*Parameter 7*). In addition, it shall still be possible to outsource the processing of the withholding tax in order to simplify administration; this shall not lead to a transfer of liability (*Parameter 8*).

e) Further Considerations of the Federal Council

With regard to the financial consequences of the reform proposal, the Federal Council assumes an estimated loss of CHF 200 million per year. At the same time, it expects dynamic additional revenues from the strengthening of the capital market. The strengthening of the safeguard purpose of the withholding tax shall also lead to more tax revenue. The Federal Council therefore assesses the cost-benefit ratio of this reform to be beneficial.

In its decision, the Federal Council considered two studies, which had been commissioned by the Federal Department of Finance. KPMG had analysed the financial effects of a reform of withholding tax and BaK Economics the economic effects of a reform of stamp duties and withholding tax.

The Federal Council refused pursuing a more comprehensive reform for cost reasons. Such a reform would have included the complete abolition of the transfer stamp tax and/or a reduction of the withholding tax rate on dividends. However, the Federal Council does not rule out the possibility that the reform may be supplemented by additional measures. The Department of Finance will examine this as part of the preparations for the consultation process (in particular profit tax in the area of participation deduction, abolition of transfer stamp tax on Swiss debt securities, equal treatment for indirect and direct interest investments).

4) Appraisal

The Federal Council's decision of 26 June 2019 is a concept paper with few details. The new proposal will be concretized for the planned consultation. The project seems positive, with good chances of implementation. It is less complex than previous concepts. In doing so, the Federal Council takes the negative feedback in the consultation process 2014/2015 into account. The financial sector was concerned about the administrative burden and liability risks from the replacement of the existing debtor-based regime by a paying agent-based regime.

No change is expected for Swiss companies' dividends, as there is no need for action in that respect from a capital market view or in terms of safeguarding tax receipts. In particular, the tax rate will probably remain at 35% for both interest and dividends.

From a Swiss capital market perspective, the proposed changes are highly welcome. It can be assumed that the planned reform of the withholding tax will have a positive effect on the development of the Swiss capital market.

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Board Composition and Ownership Structure in Switzerland – The Empirical Evidence

Reference: CapLaw-2019-30

The theory and practice of corporate governance and capital markets suggest that certain organizational structures of listed companies are to be considered superior to others or even best practice. This article critically reviews the mainstream doctrine and reports on the results of my own empirical research on corporate governance of publicly-traded companies with access to capital markets in Switzerland.

By Valentin Jentsch

1) Introduction

Various corporate law and governance theories inform us that board independence, management ownership and blockholder ownership are important elements of the overall corporate governance system. It has been close to conventional wisdom among scholars and practitioners that both independent directors and separated CEO and chairman roles are to be considered "good" corporate governance. It is also often argued that non-executive directors as well as executive directors and officers are more effective monitors and more focused on maximizing shareholder value when they have a larger financial stake in the company. Standard theory further predicts that controlling shareholders and institutional investors are efficient monitors because they manage to overcome collective action problems and make better investment decisions, also because they more closely monitor the companies they invest in. The empirical evidence on the effectiveness of these elements is, however, mixed at best. Moreover, the results and conclusions of prior theoretical and empirical research are typically country-specific and often not universally applicable.

In a recent article, titled *Board Composition, Ownership Structure and Firm Value: Empirical Evidence from Switzerland*, which has just been published in issue 2 of volume 20 of the European Business Organization Law Review (June 2019), I analyze a panel data set consisting of 43 large listed companies over a time frame of 6 years in the context of the small and open economy of Switzerland. The results of this analysis suggest that a larger fraction of independent directors on the company board decreases firm value and that a combined leadership structure may also increase value. In addition, the results indicate that both the presence of current or former executive directors on the board and a chairman with executive functions or a CEO who sits on the board may increase firm value. Similarly, the results suggest that the presence of a controlling shareholder decreases firm value and that the presence of institutional investors as significant shareholders may also decrease value.

Based on these results, I hypothesize that modern corporate governance theory and public policy rule-making in this area should in particular focus on four patterns. First, a majority rule of independent directors seems to be sufficient and more efficient than a supermajority rule, the independence definition should include the representation of significant shareholders and soft law should provide for a certain minimum number or percentage of executive directors. Second, the CEO and chairman function should not by rule of law or recommendation be required to be separated and there should be enough room for top executives to engage with and ultimately join the company board. Third, the minority rights should be further strengthened, a majority of the minority vote should be introduced for certain key situations in which the entrenchment risk of the controlling shareholder is evident and whether controlling shareholders should be subject to a duty of loyalty towards the company and/or public shareholders has to be seriously considered. Fourth, the exercise of the participation and voting rights of such investors should be further enabled and facilitated as well as a legal basis for the issuance of loyalty shares to long-term investors should be created.

In this contribution, I will briefly summarize and highlight the main arguments made in my article mentioned above. I will do so by briefly outlining these four patterns on the role of independent directors, CEO and chairman, controlling shareholders and institutional investors in listed companies, with a particular focus on the corporate landscape in Switzerland, but also beyond.

2) Board Composition

a) Independent Directors

Several regression models of my study show a very high statistically significant negative correlation between the number of independent directors sitting on the board and firm value. These results, however, do not mean that independent directors are not important. Instead, given that at least 50% of the directors of all listed companies under examination were considered to be independent at all times, these results must be interpreted on the examined 0.5 to 1 scale so that, once the majority threshold is met, additional independent directors do not add, but diminish value. The corresponding policy implication of that finding is that a majority rule, requiring at least 50% independent directors on Swiss boards, should be more efficient than a supermajority rule, which, for example, requires a minimum of 66% or 75% of independent board members.

Moreover, how director independence is defined in the Swiss context is of crucial importance. One dimension that should definitely be considered to be included as an independence criterion in Switzerland is the relationship to a significant shareholder. In my view, directors who represent a significant shareholder can by definition not be qualified as independent since they are serving such a (controlling) shareholder, but not the company and/or the public shareholders, which would in fact be part of their role.

Other models of my study show a somewhat high statistically significant positive correlation between the presence of current executive directors and firm value, indicating that an executive has more accurate and timely information about the current state of the company, which can be of great importance to the board. In addition, these models suggest that former executive directors positively affect firm value, indicating that board members, who have recently served in an executive role, know the company and the industry better and are therefore in a position to create additional value for shareholders. Therefore, a potential policy implication would be to require that the board of a listed company includes at least one director, who currently or recently held an executive function in the company.

b) CEO and Chairman

Arguably the most meaningful regression model of my study suggests that there is some evidence that a combined CEO and chairman role may increase stock market performance. A possible interpretation of this finding is that the market actually undervalues such a combined leadership structure, which might potentially add value. It can further serve as a basis to argue that public policy should not prevent listed companies from appointing the same person as CEO and chairman.

This finding is further confirmed by other models of my study, according to which there is some evidence that a CEO sitting on the board and a chairman with executive functions might add value. These results thus suggest that a combined or overlapping leadership structure can be superior to strictly separated functions. This implies that public policy should not prohibit such organizational structures and calls for a policy building upon the freedom of organization.

3) Ownership Structure

a) Controlling Shareholders

Almost all regression models of my study show a very high statistically significant negative correlation between the presence of a controlling shareholder and firm value. Given these unambiguous results, it is quite straightforward to conclude that controlling shareholders are not good monitors and in fact decrease firm value. According to the literature, this is arguably because such shareholders are not in a position to effectively police management, but because they are more likely to use their power in order to extract private benefits from the company. This discussion has been reframed as the controlling shareholder tradeoff. Referring to this framework highlights that the shareholder rights of the majority and the minority cannot be considered adequate and well balanced in Switzerland and calls for a public policy focusing on the protection of minority shareholders.

One approach would be to strengthen certain minority rights in Swiss corporate law. This has, to a certain extent, already been proposed in the course of the ongoing revision of Swiss corporate law. These policy proposals thus have to be assessed favorably.

Another measure of minority protection, which has been suggested more recently, is the introduction of a majority of the minority vote as a default rule for all companies listed in Switzerland. My take on this controversially discussed issue would be that the majority of the minority vote does in fact have a legitimate scope of application, namely when the minority rights are endangered. Typical examples for such a situation would include the introduction of an opting-out clause in relation to the obligation to submit a public tender offer or the ex post introduction of a share transfer restriction regime.

Another possible alternative for providing a more balanced protection of minorities would be to impose a duty of loyalty on the controlling shareholder (vis-à-vis the company and/or the other shareholders). In this framework, it would further be conceivable that a controlling shareholder could be held responsible and liable for the damage it causes to the company and/or other shareholders.

b) Institutional Investors

A few regression models of my study, arguably the most meaningful models, suggest that there is some evidence that the presence of institutional investors may decrease stock market performance, leading to the conclusion that institutional investors are not good corporate governance monitors. One explanation might be that the market actually overvalues an ownership structure with a large part of institutional investors as minorities, which indicates that such company should eventually be traded at a discount. This discussion can however be reframed as the institutional investor tradeoff. Using this framework, it can be argued that shareholders are still generally perceived to be too passive and often seem to be focused on short-term results, which calls for a public policy that promotes active involvement and engagement of all sorts of institutional investors in the company and encourages a long-term investment horizon among all types of institutional investors.

One way to promote an active involvement and engagement of all sorts of institutional investors in the company would be to enable and facilitate the exercise of their participation and voting rights. Many of the policies, which have been introduced more recently, thus have to be assessed favorably.

An instrument that encourages a long-term orientation of institutional investors would be the issuance of loyalty shares (i.e., shares with multiple voting or dividend rights) to long-term shareholders. It is up to the Swiss legislator to consider, whether or not to introduce this instrument into the law.

4) Conclusion

The new evidence of my country study casts doubt on several generally accepted good corporate governance principles and highlights the need for a reconsideration of public policy towards board governance and blockholder governance, not only in Switzerland, but also at the international level. The findings and conclusions of my article essentially cast doubt on and point to the need for fundamental revision of generally accepted international understandings of what constitutes "good" corporate governance norms today, in particular with regard to listed companies with access to capital markets. This is especially true for the concept of independent directors, which was long believed to be the panacea in corporate governance, notably in controlled companies, and gives rise to further research on blockholder governance, in particular to a systematic and thorough analysis of companies with a controlling shareholder. Since the times are changing and the allocation of power between management and shareholders is currently being readjusted, at least and in particular in listed companies, we also have to rethink the corporate governance and public policy particularities relating to board composition and ownership structure of publicly-traded companies.

The complete article (including tables and footnotes), which has been discussed in this contribution, can be found at https://doi.org/10.1007/s40804-018-00128-6.

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Credit Suisse Establishes Covered Bond Programme

Reference: CapLaw-2019-31

Credit Suisse (Schweiz) AG established its CHF 20 billion Covered Bond Programme irrevocably guaranteed as to payments of interest and principal by Credit Suisse (Schweiz) Hypotheken AG and on 16 July 2019 completed its inaugural issuance of CHF 250 million 0.000% Fixed Rate Covered Bonds due 2029 thereunder. The Covered Bonds are indirectly backed by a portfolio of domestic mortgages originated by Credit Suisse Schweiz.

Cembra Money Bank Financing of its Acquisition of cashgate

Reference: CapLaw-2019-32

To finance the purchase price for its acquisition of cashgate and the refinancing of cashgate's loan portfolio, Cembra Money Bank has sold treasury shares for gross proceeds of CHF 112.8 million in an accelerated bookbuilding and issued CHF 150 million Perpetual Additional Tier 1 Bonds as well CHF 250 million Net Share Settled Convertible Bonds.

Julius Baer Issues Perpetual Tier 1 Subordinated Bonds

Reference: CapLaw-2019-33

On 25 June 2019, Julius Baer Group Ltd. issued CHF 350 million Perpetual Tier 1 Subordinated Bonds. The Bonds have been admitted to trading on the SIX Swiss Exchange.

Credit Suisse Issues Bail-inable Notes under EMTN Programme

Reference: CapLaw-2019-34

On 24 June 2019, Credit Suisse Group AG completed the issuance of EUR 1 bn 1.000% Fixed Rate Reset Senior Callable Notes due 2027 under its Euro Medium Term Note (EMTN) Programme. The Notes are governed by Swiss law, eligible to count towards Credit Suisse's Swiss gone concern requirement and exempted from the Swiss withholding tax regime. The Notes have been admitted to trading on the SIX Swiss Exchange.

Credit Suisse Issues SGD 750 million 5.625 per cent. Perpetual Tier 1 Contingent Write-down Capital Notes

Reference: CapLaw-2019-35

On 6 June 2019, Credit Suisse Group AG issued SGD 750 million 5.625 per cent. Perpetual Tier 1 Contingent Write-down Capital Notes. The Notes are "high trigger" additional tier 1 capital instruments that are eligible to fulfill Credit Suisse's Swiss going concern requirements. They feature a full contractual write-down if (among other events) Credit Suisse's consolidated common equity tier 1 capital falls below 7 per cent. of its consolidated risk weighted assets. The Notes are traded on the SIX Swiss Exchange.

Quo Vadis – Financial Centre Switzerland? New Developments in Client and Investor Protection in Financial Markets Regulation (Quo Vadis – Finanzplatz Schweiz? Neuerungen beim Kunden- und Anlegerschutz im Finanzmarktrecht)

Wednesday, 28 August 2019, Universität Zürich-Zentrum, Zurich

http://www.eiz.uzh.ch/uploads/tx_seminars/Programm_Quo_Vadis_28.08.2019.pdf

22nd Conference Mergers & Acquisitions (22. Zürcher Konferenz Mergers & Acquisitions)

Tuesday, 3 September 2019, Lake Side, Zurich

http://www.eiz.uzh.ch/uploads/tx_seminars/Programm_M_A_03.09.2019__01.pdf

Capital Markets and Transactions XV (Kapitalmarkt – Recht und Transaktionen XV)

Tuesday, 19 November 2019, Metropol, Zurich

http://www.eiz.uzh.ch/uploads/tx_seminars/Programm_Kapitalmarkt_19.11.2019.pdf